

SERVED: January 7, 1994

NTSB Order No. EA-4055

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 6th day of January, 1994

DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-13369
v.	)	
	)	
C & S AVIONICS, INC.	)	
	)	
Respondent.	)	
	)	

DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-13370
v.	)	
	)	
WESTON INSTRUMENT REPAIR SERVICE	)	
OF OHIO,	)	
Respondent.	)	
	)	

**OPINION AND ORDER**

The respondents appeal from the oral initial decisions  
Administrative Law Judge William E. Fowler, Jr., rendered in this  
consolidated proceeding on November 29, 1993, at the conclusion

of an evidentiary hearing.<sup>1</sup> By those decisions, the law judge concluded that the respondents had violated section 145.23 of the Federal Aviation Regulations ("FAR," 14 CFR Part 145) by refusing to allow the Administrator to inspect their repair stations.<sup>2</sup> The law judge therefore affirmed two emergency orders of the Administrator suspending respondents' repair station certificates until such time as respondents permit the Administrator to conduct an inspection of their facilities. As we find, for the reasons discussed below, no merit in respondents' challenges to the law judge's decisions, the appeals will be denied.<sup>3</sup>

The emergency orders of suspension, dated October 25, 1993 (Weston) and October 26 (C & S), as amended at the hearing, alleged, among other things, the following facts and

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<sup>1</sup>Although the cases were consolidated, the evidence as to each respondent was heard consecutively at the hearing, with an initial decision being rendered with respect to each respondent after its case was completed. Excerpts from the hearing transcript containing the two initial decisions are attached.

<sup>2</sup>FAR section 145.23 provides as follows:

Each certificated repair station shall allow the Administrator to inspect it, at any time, to determine its compliance with this part. The inspections cover the adequacy of the repair stations (sic) inspection system, records, and its general ability to comply with this part. After such an inspection is made, the repair station is notified, in writing, of any defects found during the inspection.

<sup>3</sup>The respondents were represented by the same counsel at the hearing, but are pro se on their appeals here. The Administrator has filed reply briefs opposing the appeals. Although those replies were filed one day late, we will accept them, over the respondents' objections, as the tardiness will in no way prejudice the respondents. See Application of Grant, NTSB Order EA-3919 (1993). The Administrator's motions for a one-day extension of time to file the reply briefs are granted.

circumstances:

As to respondent Weston--

1. You are the holder of Repair Station Certificate Number OM5R098N.
2. On August 19, 1993, the Administrator, through his Cleveland Flight Standards District Office, requested to schedule a facility inspection.
3. On September 27, 1993, you were again requested to schedule a facility inspection.
4. You indicated you declined on advice of counsel.
5. On September 30, 1993, agents of the Administrator attempted to conduct an inspection of your facility.
6. You were open for business at the time the inspection was requested.
7. You refused the Administrator's agents access to your facility to conduct an inspection.

As to respondent C & S--

1. You are the holder of Repair Station Certificate number HM5R914M.
2. In a letter dated September 20, 1993, you were advised that the Administrator would be conducting an inspection of your facility on September 29, 1993.
3. On September 27, 1993, you advised that your attorney would respond to the notice of inspection.
4. On September 27, 1993, your attorney advised you would not submit to a facility inspection.

In defense of the charged violations, the respondents essentially contend that the inspection requests were, for various reasons, invalid and, therefore, no refusals in fact occurred. To understand this contention, some background is necessary.

The record reflects that the FAA Flight Standards District Office (FSDO) responsible for monitoring respondents' repair station operations has a policy of conducting, or of attempting to conduct, two routine surveillance inspections per year of repair station certificate holders within its district. It further appears that inspections of respondents' facilities either late in 1992 or early in 1993 had led to a judgment that a re-examination of their qualification to hold repair station certificates was necessary. However, issues concerning those *re-examination* requests remained unresolved when the *inspection* requests that are the subject of this proceeding were made. Respondents, claiming that the Administrator was actually attempting to perform re-examinations under Section 609 of the Act rather than inspections under the regulation, argue in effect that the Administrator did not have to be allowed to inspect their facilities unless he established that the inspections would not involve any matter at issue in the re-examination requests.<sup>4</sup>

We see no merit in the argument.

Section 145.23 unequivocally states that a repair station

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<sup>4</sup>Associated with this argument is the claim that the inspectors did not adequately inform the respondents of the legal basis for the inspections. That is, respondents maintain that they were free to refuse an inspection under a regulation they concede applies to them if the inspectors either incorrectly advised them that the authority for the inspection was Section 609 of the Federal Aviation Act, rather than a regulation adopted pursuant to that statute, or advised them that the inspection was pursuant to both the statute *and* the regulation. We do not agree, at least in the circumstances presented here, that such errors in citing the basis for a lawful inspection establish a valid ground for refusing to submit to one.

must allow the Administrator to inspect it "at any time" so that he can determine its compliance with the regulations applicable to the provision of repair station services, and the respondents do not argue that there is any basis in the text of the regulation for limiting the Administrator's authority to inspect a repair station whose qualifications have already been drawn in question. Rather, they appear to argue that allowing an inspection will, in some unexplained way, compromise their ability to dispute the necessity for the re-examinations the Administrator has proposed. We find respondents' position unavailing.

The Administrator has not, so far as we are aware, instituted Section 609 certificate action against the respondents for their apparent refusals, to date, to submit to a re-examination. Thus, the fact that if such action were taken (and appealed to us), the Administrator would have to show that a reasonable basis existed for the re-examination requests does not, in our view, support a conclusion that the Administrator needed to justify or undertake to limit any subsequent facility inspection he sought to conduct of respondents' facilities. Respondents' obligation under the regulation to permit inspections of their facilities was in no way affected by their disagreement with the Administrator over the existence of the previously noted alleged defects and, to the extent they do exist, the need to correct them.<sup>5</sup> Neither the pendency of that

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<sup>5</sup>It would indeed be anomalous, we think, to hold, as

disagreement, nor any error by the inspectors in citing their authority to inspect, converted the inspections the Administrator sought to perform into some form of re-examination certificate action that the respondents had not had the opportunity to protest in a hearing. In sum, nothing in respondents' appeals demonstrates that the law judge erred in finding that they failed to allow inspections the Administrator was entitled to conduct.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondents' appeals are denied, and
2. The emergency orders of suspension and the initial decisions are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

(..continued)  
accepting respondents' position would require us to do, that the Administrator's right to monitor the performance of a repair station should be restricted whenever he informed the station of his reasons for questioning the adequacy of its compliance with Part 145.